

REMARKS

Reconsideration of this application is respectfully requested.

Claims 1, 2, 5-6 and 11-17 are under consideration. Claims 3 and 4 are withdrawn. Claims 7-10 have been cancelled herein.

Objections were made to Claims 7-10, 13 and 14 under 37 CFR 1.75(c). Claims 7-10, noted by the Examiner as not further limiting Claim 1, have been cancelled. The Examiner is correct that the upper amount of the range of flavorant in Claim 14 should have been 0.5. Claim 14 has been amended in this manner. Reconsideration of the objection to the ranges of odorant and flavorant in Claims 13 and 14, respectively, is respectfully requested. The range, 0.0005 to 0.5 grams per 100 grams, in each instance, is within the range for each of these ingredients, 0.0002 through 2%, recited in Claim 1.

Claims 1, 2 and 5-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Shanni (USP 5,631,012) in view of the patent to Deckers *et al.* (U.S. Patent #6,372,234). Claims 7-10 have been cancelled. It is respectfully submitted that Claims 1, 2, 5-6 and 11-17 patentably distinguish from this ground of rejection.

As in the previous Office Action (April 13, 2007), the Examiner's summary of the disclosure of the Shanni patent refers to several components present in the lip pomade of the patent and their amounts that correspond to components of the present claims and asserted that it would be obvious to add to the lip pomade of Shanni a colorant since the Deckers *et al.* patent includes a colorant in products such as lipsticks, lip-glosses, lip balms and lip pencils. As previously pointed out this position overlooks the facts that Shanni does not disclose skin and particularly lip products that are enhancers of appearance, such as lip glosses but rather must have present vernix as an essential material to improve skin softness, flexibility, plasticity and moisturization; that is vernix, a cheesy deposit on the surface of human or animal fetus derived from the stratum corneum, sebaceous secretion and remnants of epithelium.

A material such as vernix would be alien to a lip gloss and the present claims clearly patentably distinguish from the combination of the Shanni and Deckers *et al.* patents in that

vernix type materials are not within the scope of the claims reciting lip gloss composition *consisting essentially of* the recited components.

Since vernix is a naturally occurring substance that covers and protects skin of late term fetuses *in utero* and is routinely washed off at birth as part of neonatal care, it is not expected to be stable for the long periods of time required for ingredients in a cosmetic such as lip gloss.

Use of vernix in a cosmetic that is applied to lips is both aesthetically objectionable as well as likely to be unsafe, particularly when it is considered that it is of internal origin within the uterus and passes through the mother's birth canal. Therefore, it could be subject to hematological contamination and conceivably could be implicated in non-hematological infections such as human papilloma viruses, gonorrhea, Chlamydia and others. In view of these disease implications its use on lips should be avoided.

In the Office Action (bridging pages 5 to 6) the Examiner stated "no evidence has been submitted that would show the removal of the particular moisturizer (that is, vernix) taught by Shanni would have a negative effect on the composition to function for application to the lips." It is acknowledged that Examiner Mercier and Examiner Gollamudi raised this point during the interview on July 10, 2007, with Applicant's undersigned attorney.

Time did not permit for a response presenting such evidence in the Amendment filed in response to the then outstanding Office Action of April 13, 2007, since extended comparative aging tests were needed to support Applicant's position. Such aging tests have now been completed and are presented herewith in a Declaration under 37 CFR 1.132 of Dr. Ira S. Jacobson. The comparisons provide evidence to support the unsuitability and, therefore, patentability, of the claimed composition that excludes vernix. The presence of vernix masks the pleasant aroma of the lip gloss of the invention with a very unpleasant odor and also results in cosmetic deterioration, rendering it unsuitable for application to the lips.

For the reasons set forth above and the evidence provided in the accompanying Declaration it is respectfully requested that this application be reconsidered and Claims 1, 2, 5-6 and 11-17 allowed.

Should the Examiner be of the opinion that outstanding issues remain and discussion thereof would be helpful at this time she is respectfully requested to telephone Attorney Robert Stone at 732-469-3882 or the undersigned attorney, Alan M. Weisberg, at 954-828-1488.

Respectfully submitted,

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